

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

DANIEL CASARES,

Plaintiff,

v.

OFFICER BERNAL, Star No. 12254,
OFFICER SZUBSKI, Star No. 4443, OFFICER
VERDIN, Star No. 2913, OFFICER LEACH,
Star No. 4927, OFFICER WILLIAMS, Star No.
2999, OFFICER CALVO, Star No. 15753,
OFFICER PARTYKA, Star No. 10596, and the
CITY OF CHICAGO,

Defendants.

FILED: JULY 24, 2008

08CV4198

JUDGE LINDBERG

MAGISTRATE JUDGE BROWN

EDA

No.

COMPLAINT AT LAW

NOW COMES the Plaintiff, DANIEL CASARES, by and through Horwitz, Richardson, & Baker LLC., and pursuant to this Complaint at Law, states the following against the above named Defendants, to wit OFFICER BERNAL, Star No. 12254, OFFICER SZUBSKI, Star No. 4443, OFFICER VERDIN, Star No. 2913, OFFICER LEACH, Star No. 4927, OFFICER WILLIAMS, Star No. 2999, OFFICER CALVO, Star No. 15753, OFFICER PARTYKA, Star No. 10596 (hereinafter, the “DEFENDANT OFFICERS”), and the CITY OF CHICAGO.

JURISDICTION

1. The jurisdiction of the court is invoked pursuant to the Civil Rights Act, 42 U.S.C. § 1983; the Judicial Code, 28 U.S.C. §1331 and §1343(a); the Constitution of the United States; and this Court’s supplementary jurisdiction powers.

PARTIES

2. DANIEL CASARES is a resident of the State of Illinois and a citizen of the United States.

3. The DEFENDANT OFFICERS were at all times relevant hereto employed by and acting on behalf of the CITY OF CHICAGO.

4. The CITY OF CHICAGO is a duly incorporated municipal corporation and is the employer and principal of the DEFENDANT OFFICERS as well as the other officers and/or employees referred to in this Complaint. At all times material to this Complaint, the DEFENDANT OFFICERS were acting under color of state law, ordinance and/or regulation, statutes, customs, and usages of the CITY OF CHICAGO.

FACTS

5. On or about October 9, 2006, PLAINTIFF was seated in a vehicle located at 10354 South Avenue M in Chicago, Illinois.

6. PLAINTIFF had been a quadriplegic for approximately four years preceding October 9, 2006.

7. On or about October 9, 2006, some or all of the DEFENDANT OFFICERS struck PLAINTIFF in the face and dragged him out of the car. Some or all of the DEFENDANT OFFICERS continued to hit and kick PLAINTIFF while he was on the ground.

8. On or about October 9, 2006, some or all of the DEFENDANT OFFICERS were engaged in an unreasonable seizure of DANIEL CASARES. This conduct violated the Fourth Amendment to the United States Constitution.

9. On or about October 9, 2006, DANIEL CASARES did not obstruct justice, resist arrest, and/or batter, and/or assault any of the DEFENDANT OFFICERS.

10. The show of force initiated by and/or the failure to intervene in the use of said force by the DEFENDANT OFFICERS caused an unreasonable seizure to DANIEL CASARES.

11. As a direct and proximate result of one or more of the aforesaid acts or omissions of the DEFENDANT OFFICERS, DANIEL CASARES was caused to suffer damages.

12. On or about October 9, 2006, the DEFENDANT OFFICERS were on duty at all times relevant to this Complaint and were duly appointed police officers for the CITY OF CHICAGO. The DEFENDANT OFFICERS engaged in the conduct complained of, on said date, in the course and scope of employment and while on duty. This action is being brought with regard to the individual capacity of the DEFENDANT OFFICERS.

13. Upon information and belief, OFFICER BERNAL, Star No. 12254, on October 9, 2006, came into physical contact with DANIEL CASARES.

14. Upon information and belief, OFFICER SZUBSKI, Star No. 4443, on October 9, 2006, came into physical contact with DANIEL CASARES.

15. Upon information and belief, OFFICER VERDIN, Star No. 2913, on October 9, 2006, came into physical contact with DANIEL CASARES.

16. Upon information and belief, OFFICER LEACH, Star No. 4927, on October 9, 2006, came into physical contact with DANIEL CASARES.

17. Upon information and belief, OFFICER WILLIAMS, Star No. 2999, on October 9, 2006, came into physical contact with DANIEL CASARES.

18. Upon information and belief, OFFICER CALVO, Star No. 15753, on October 9, 2006 came into physical contact with DANIEL CASARES.

19. Upon information and belief, OFFICER PARTYKA, Star No. 10596, on October 9, 2006 came into physical contact with DANIEL CASARES.

COUNT I
§1983 Excessive Force

20. DANIEL CASARES re-alleges paragraphs 1 – 19 as though fully set forth herein.

21. The actions, and/or the failure to intervene in the actions, of the DEFENDANT OFFICERS amounted to an excessive use of force onto DANIEL CASARES. This conduct violates the Fourth Amendment of the United States Constitution.

22. The aforementioned actions of the DEFENDANT OFFICERS were the direct and proximate cause of the constitutional violations set forth above.

WHEREFORE, DANIEL CASARES demands compensatory damages from the DEFENDANT OFFICERS. DANIEL CASARES also demands punitive damages, costs, and attorneys' fees against the DEFENDANT OFFICERS. DANIEL CASARES also demands whatever additional relief this Court deems equitable and just.

COUNT II
Battery –State Claim

23. DANIEL CASARES re-alleges paragraphs 1 – 19 as though fully set forth herein.

24. The DEFENDANT OFFICERS struck the DANIEL CASARES intentionally, without consent and without justification.

25. The conduct of the DEFENDANT OFFICERS was in violation of Illinois law.

26. The aforementioned actions of the DEFENDANT OFFICERS were the direct and proximate cause of the violations set forth above.

WHEREFORE, DANIEL CASARES demands compensatory damages from the DEFENDANT OFFICERS. DANIEL CASARES also demands punitive damages and costs

against the DEFENDANT OFFICERS. DANIEL CASARES also demands whatever additional relief this Court deems equitable and just.

COUNT III
745 ILCS 10/9-102 Claim Against the CITY OF CHICAGO

27. DANIEL CASARES re-alleges paragraphs 1 – 19 as though fully set forth herein.

28. Defendant CITY OF CHICAGO is the employer of the DEFENDANT OFFICERS alleged above.

29. The DEFENDANT OFFICERS, as alleged above, committed the acts under color of law and within the scope of their employment with the CITY OF CHICAGO.

WHEREFORE, should the DEFENDANT OFFICERS be found liable for any of the alleged counts in this cause, DANIEL CASARES demands that, pursuant to 745 ILCS 10/9-102, the CITY OF CHICAGO pay DANIEL CASARES any judgment obtained against the DEFENDANT OFFICERS as a result of this Complaint.

COUNT IV
Supplementary Claim for *Respondeat Superior*

30. DANIEL CASARES re-alleges paragraphs 1 – 19 as though fully set forth herein.

31. The aforesaid acts of the DEFENDANT OFFICERS were within the scope of employment and therefore the Defendant CITY OF CHICAGO, as principal, is liable for the actions of its agent(s) under the doctrine of *respondeat superior*.

WHEREFORE should the DEFENDANT OFFICERS be found liable for any state claims alleged herein, Plaintiff demands judgment against the CITY OF CHICAGO and such other additional relief, as this Court deems equitable and just.

JURY DEMAND

32. Plaintiff demands trial by jury.

Respectfully submitted,

s/ Blake Horwitz
Attorney for the Plaintiff
Blake Horwitz

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